



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01389/2018

THE IMMIGRATION ACTS

Heard at Field House
On 18 May 2018

Decision & Reasons Promulgated
On 24 May 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

[M R]

Claimant

Representation:

For the claimant:

Mr G Franco, instructed by Schneider Goldstein Immigration Law

For the appellant:

Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Sweet promulgated 15.3.18, allowing on asylum, immigration and article 8 grounds the claimant's appeal against the decision of the Secretary of State, dated 15.1.18, to refuse her protection claim.
2. First-tier Tribunal Judge Boyes granted permission to appeal on 3.4.18.
3. Thus the matter came before me on 18.5.18 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons summarised below, I found such material error of law in the making of the decision of the First-tier Tribunal as to require the decision to be set aside and remade in the First-tier Tribunal.
5. The basis of the protection claim is that the claimant fears that as a Rohingya Muslim she will be killed by the Myanmar Burmese people because of her religion. The Secretary of State's case was that the claimant is from Bangladesh and is not a citizen of Myanmar as claimed.
6. Judge Sweet concluded that the claimant is a Rohingya Muslim of Burmese nationality and will be at risk on return to Burma. The judge also found that as this would amount to very significant obstacles to returning to Burma, the appellant would succeed under paragraph 276ADE(vi) of the Immigration Rules.
7. In essence, the grounds argue that the judge erred by failing to provide adequate reasoning for the findings made and conclusions reached, and by failing to address the arguments advanced by the Secretary of State.
8. In granting permission to appeal, Judge Boyes found it arguable that the judge had not fully engaged with the arguments of the respondent, and even if that was done, there was insufficient or inadequate reasoning as to why those arguments were less favoured than those of the claimant. "The least a party is entitled to is reasons why their argument was not preferred."
9. In his submissions, Mr Duffy pointed out that the only reasoning provided in the decision is that contained within [37] of the decision and is effectively limited to a single sentence to the effect that the judge did not consider that it damaged the claimant's claim that she cannot remember the exact date of when she and her family left Bangladesh. Whilst the judge noted and set out in the decision many of the discrepancies relied on by the Secretary of State, no findings are made in respect of them. The decision is a recitation of the case on each side without making adequate findings. It is not clear to the Secretary of State what was considered to be in the claimant's favour, what weight was given to the representations of the Secretary of State, and why the former outweighed the latter.
10. Mr Franco began his submissions by submitting that the Secretary of State's appeal cannot succeed as there was no challenge in the application for permission to appeal to the Upper Tribunal against the long residence conclusion, allowing the appeal under the Rules.
11. However, it is clear that the appeal could not have succeeded on the 20 year long residence requirement, the claimant not having been in the UK 20 years, as the judge found at [27]. Mr Duffy also pointed out that in [39] the judge was only considering return to Burma and did not consider that there were any very significant obstacles to return to Bangladesh. In the circumstances, there was no merit in Mr Franco's point.
12. I find that the decision of the First-tier Tribunal is almost devoid of reasoning to justify the findings and conclusions made. The judge set out the Secretary of State's

position and the discrepancies relied on, but failed to go on to explain why the points made by the Secretary of State were to be ignored or outweighed by other evidence or findings. Whilst it is clear that the judge accepted the claimant's account, that statement alone is insufficient to provide both parties clear reasoning why one succeeded and the other failed. The judge was under a duty to make a holistic assessment of the evidence not just as to the date when the claimant allegedly left Burma but also as to the conflict over the appellant's nationality. Having failed to properly reason the decision, this error of law in turn infects the sustainability of the single finding relied on to support the findings under paragraph 276ADE as to very significant obstacles.

13. In the circumstances, the decision is entirely inadequate and in error of law.

Remittal

14. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
15. In all the circumstances, I relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Decision

16. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the directions below.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Consequential Directions

1. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross;
2. The appeal is to be decided afresh with no findings of fact preserved;
3. The ELH is 3 hours;
4. An interpreter in Bengali (Sylheti) will be required;
5. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Sweet;
6. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;
7. The First-tier Tribunal may give such further or alternative directions as are deemed appropriate.

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I continue the anonymity order.

Fee Award

Note: this is not part of the determination.

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated